

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

MARK SUEDKAMP, 2015 APR 30 P 3:47)
Plaintiff MAUREEN E. KELLY)
LAKE CO. CLEAR OF COURT)
vs.)
CITY OF PAINESVILLE, et al.,)
Defendants)

CASE NO. 15CV000042
JUDGE VINCENT A. CULOTTA
JUDGMENT ENTRY

This matter comes before the Court upon the timely Notice of Appeal filed by Appellant Mark H. Suedkamp following a December 10, 2014 decision of the Ohio Department of Unemployment Compensation Review Commission (hereinafter, Review Commission) denying the Appellant's request for review.

STATEMENT OF THE CASE

On June 26, 2014, the Director, Ohio Department of Job and Family Services (hereinafter, Director) issued the initial Determination finding that the Claimant, Mark Suedkamp, was discharged from his employment with the City of Painesville with just cause and disallowing his application for unemployment benefits.

Mr. Suedkamp filed an appeal and on July 28, 2014, the Director issued a Redetermination affirming the initial Determination.

Mr. Suedkamp then filed an appeal from the Director's Redetermination and the file was transferred to the Unemployment Compensation Review Commission. A hearing was held on October 2, 2014, and October 23, 2014, wherein Mr. Suedkamp appeared and presented his testimony. The employer, City of Painesville, also appeared and presented the testimony of its witness Anthony Carson, Jr., Painesville City Manager. Upon consideration of the testimony and evidence, the hearing officer affirmed the Director's redetermination and found that Mr. Suedkamp had been discharged from his employment with the City of Painesville with just cause. Mr. Suedkamp's application for unemployment benefits was disallowed. The decision was issued on October 28, 2014.

Mr. Suedkamp filed a request for review of that decision which was disallowed on December 10, 2014. The instant appeal was filed on January 8, 2015, as a result of the decision denying Mr. Suedkamp's request for review and is timely.

APPELLANT'S BRIEF

It is Appellant Mark H. Suedkamp's position that there is sufficient evidence in the record to show that a reasonable person of ordinary intelligence could have, within the parameters set forth by R.C. §4141.281(C), reached a different conclusion than that of the Unemployment Compensation Review Commission.

In his brief, Appellant asserts that the record shows that the decision to deny him unemployment benefits because he was discharged from work with just cause due to insubordination is not lawful and is unreasonable and is against the manifest weight of the evidence. Specifically, Appellant alleges that the record shows that Appellant was expected to get the job done by a certain date regardless of the effort, even if that meant working for free, because overtime was not authorized by the employer. Appellant asserts that the record shows that he had an argument during a meeting with the City Manager which resulted in him being suspended for five days, starting in September, 2014. Appellant asserts that his deadline was extended but he was told he had to get the job done or be fired and that overtime was not authorized. Appellant contends that the employer did not object or approve of him working overtime for free. Appellant contends that he turned in overtime hours and was fired based upon insubordination. Appellant maintains that he was not insubordinate because he was not "demonstrating an unreasonable disregard for an employer's best interest." See *Janovsky v. OBES* 108 Ohio App.3d 690 (1996). Appellant argues that his voluntary extra work in order to get the job done benefitted the city and was not an unreasonable disregard of Painesville's best interest. Thus, Appellant asserts that Painesville did not have just cause to fire him.

Appellant also asserts his use of profanity was not a valid reason to fire him. In support of his position, Appellant relies upon *Lombardo v. Administrator*, 119 Ohio App.3d 217 (1997), "The mere fact that an employee uses profanity does NOT support a discharge for just cause in connection with work."

Appellant asserts that findings made by Ohio Job and Family Services and the hearing officer are inconsistent with the record. Further, Appellant asserts that the hearing officer did not

fully and fairly develop the record. It is Appellant's position that the hearing officer favored the City of Painesville during the hearing.

Appellant asks for a review of this matter, and, if appropriate, that it be remanded back to the Unemployment Compensation Review Commission for reconsideration.

APPELLEE DIRECTOR'S BRIEF

Appellee, Director, Ohio Department of Job and Family Services (hereinafter, Director) filed a brief in response to Appellant's brief. Appellee Director contends that the decision of the Review Commission that Appellant was discharged from his employment with the City of Painesville with just cause is not unlawful, unreasonable, or against the manifest weight of the evidence and should be affirmed under R.C. §4141.282(H). Appellee notes that the determination of factual questions and the evaluation of the credibility of the witnesses is the responsibility of the hearing officer and not the Court. Further, Appellee notes that the Court's only duty is to determine whether the decision is supported by some competent, credible evidence and it is not to conduct a trial de novo. See *Kilgore v. Bd. Of Review*, 2 Ohio App.2d 69 (1965), *Tzangas, Plakas & Mannos v. Ohio Bur. of Employ. Serv.*, 73 Ohio St.3d 694 (1995), *Angekovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159 (1983), *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947), *Irvine v. Unemploy. Comp. Bd. Of Rev.*, 19 Ohio St.2d 15 (1985), *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41 (1982). Appellee maintains that the Review Commission's decision cannot be reversed simply because reasonable minds might reach different conclusions. *Tzangas, Plakas & Mannos*, 73 Ohio St.3d 694.

Appellee argues that there is competent, credible evidence in the record which supports the Review Commission's decision that the Appellant was discharged with just cause. Appellee notes that the transcript of the hearing provides that Mr. Suedkamp was an Engineer for the City of Painesville and in November, 2013, he was assigned duties as Senior Engineer on a paving project. Appellee further notes that the transcript provides that Mr. Suedkamp committed to completing the paving project by the end of March, 2014, and that Mr. Suedkamp was advised that overtime was not included in the budget for the project and was not authorized. Appellee notes that the transcript provides that Mr. Suedkamp attended a meeting on March 24, 2014, regarding the completion of the meeting and informed the City Engineer that the project would not be completed by the end of the month. Appellee notes that the transcript of the hearing provides that Mr. Suedkamp screamed at this supervisor that he could not finish the project

without overtime and that his supervisor wanted him to work for free. Mr. Suedkamp also questioned his supervisor's qualifications. The transcript indicates that Mr. Suedkamp's behavior resulted in a five day suspension for insubordination and for being "verbally abusive" toward a supervisor. Appellee notes that the transcript reveals that the suspension was delayed until September, 2014. Further, the record shows Mr. Suedkamp was given two additional extensions for the paving project and again was told that overtime was not authorized. However, Mr. Suedkamp submitted a timesheet from March 30, 2014, to April 12, 2014, containing entries for overtime of 21.5 hours. Appellee notes that the transcript shows that on April 11, 2014, Mr. Suedkamp was provided with a written statement indicating that if he continued to work overtime, disciplinary action would result. Mr. Suedkamp submitted a time sheet for April 13, 2014, to April 26, 2014, containing entries for overtime of 36.75 hours. Appellee notes that the record reflects that Mr. Suedkamp admitted that he was aware that overtime was not authorized by his employer. Appellee further notes that the records reflects that the insubordination resulted in his termination on May 9, 2014. Appellee maintains that the record shows that Mr. Suedkamp was paid for all the unauthorized overtime. It is Appellee's position that Mr. Suedkamp engaged in a series of insubordinate actions which resulted in him being terminated for just cause which renders him ineligible to receive unemployment compensation benefits. Appellee asks the Court to affirm that decision.

APPELLEE CITY OF PAINESVILLE'S BRIEF

Appellee City of Painesville also filed a brief arguing that the Court should affirm the Unemployment Compensation Review Commission's decision disallowing Mr. Suedkamp's application for unemployment benefits because the decision was not unlawful, unreasonable, or against the manifest weight of the evidence. It is Appellee's position that the hearing officer fully and fairly developed the record in accordance with R.C. §4141.281(C)(2). Appellee maintains that Mr. Suedkamp was present at the hearing, had the opportunity to subpoena witnesses, introduce relevant evidence into the record, and testify. Appellee maintains that the hearing officer did not exclude any of the evidence proffered by Mr. Suedkamp nor did he refuse any of his potential witnesses. Appellee further notes that this Court is prohibited from disturbing the factual finding of the Unemployment Compensation Review Commission. Appellee asserts that there is no legal precedent for Mr. Suedkamp's argument that the decision should be reversed because "a reasonable person of ordinary intelligence could have . . . reached

a different conclusion.” Appellee further contends that it had a legal duty to pay Mr. Suedkamp for his overtime even though Mr. Suedkamp says that he did not expect to be paid for the overtime he put on his timesheet. Appellee asks the Court to affirm the decision of the Unemployment Compensation Review Commission.

APPELLANT’S REPLY

Appellant maintains that he is not asking for a trial de novo. Rather, he asks that the Court review the entire record and remand the matter back to the Unemployment Compensation Review Commission for reconsideration based upon inconsistencies between the Appellees’ characterization of the record and the actual record itself. Mr. Suedkamp further asks that the Court order that the documentation he provided to the Ohio Department of Job and Family Services is organized on remand.

COURT’S ANALYSIS AND CONCLUSION

Pursuant to R.C. §4141.282(H):

The Court shall hear the appeal upon receipt of the certified record provided by the commission. If the Court finds that the decision was unlawful, unreasonable or against the manifest weight of the evidence, it shall reverse, vacate or modify the decision, or remand the matter to the commission. Otherwise, the Court shall affirm the decision of the commission.

The standard of review sought by the Appellant in this case is not the legal standard of review. The Court cannot substitute its own judgment for that of the Board of Review. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947). Ordinarily, the court should defer to the agency's resolution of purely factual issues which depend on the credibility of witnesses or the relative weight of conflicting evidence. *Angekovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d at 159 at 161 (1983); *Brown-Brockmeyer*, 148 Ohio St. at 511 at 518. For such issues, the common pleas court should affirm the agency's findings if they have support from some competent, credible evidence. *Id.*; *Bernard v. Administrator*, 9 Ohio App.3d 277, 279 (1983). The Court’s only duty is to determine whether the decision is supported by some competent, credible evidence and it is not to conduct a trial de novo. See *Kilgore v. Bd. Of Review*, 2 Ohio App.2d 69 (1965), *Tzangas, Plakas & Mannos v. Ohio Bur. of Employ. Serv.*, 73 Ohio St.3d 694 (1995), *Angekovski* 11 Ohio App.3d 159, *Brown-Brockmeyer*, 148 Ohio St. 511, *Irvine v.*

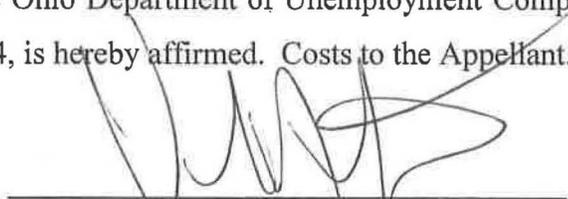
Unemploy. Comp. Bd. Of Rev., 19 Ohio St.2d 15 (1985), *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41 (1982). Thus, even assuming arguendo, that this Court was persuaded in any way by Appellant's arguments that there was "sufficient evidence in the record showing that a reasonable person of ordinary intelligence could have reached a different conclusion," that is not the standard by which the Court is held to in order to affirm, reverse, or remand a decision of the Unemployment Compensation Review Commission.

Upon consideration of the record, as well as the briefs of the parties, the Court finds that the decision of the Review Commission was supported by competent, credible evidence and is not contrary to law. Specifically, the record provides competent, credible evidence that Mark Suedkamp was discharged from work for just cause based upon insubordination. It is uncontroverted that Mr. Suedkamp was informed by his employer City of Painesville that overtime was not authorized and was not part of the budget of the project he was working on when he worked overtime hours from March 30, 2014, through April 12, 2014. Further, it is uncontroverted that after Mr. Suedkamp submitted the above-mentioned overtime hours, he was informed in writing that overtime was not permitted for the project. It is uncontroverted that Mr. Suedkamp again worked overtime from April 13, 2014, through April 26, 2014. It is uncontroverted that this occurred subsequent to Mr. Suedkamp receiving discipline in the form of a five day suspension to be served in September, 2014, for an outburst during a meeting with his supervisor over the deadline involved in the project.

Accordingly, the hearing officer's final determination that Appellant was ineligible to receive unemployment benefits pursuant to R.C. §4141.29(G) is supported by the manifest weight of the evidence and is not contrary to law or unreasonable.

WHEREFORE, the decision of the Ohio Department of Unemployment Compensation Review Commission dated October 28, 2014, is hereby affirmed. Costs to the Appellant.

IT IS SO ORDERED.



VINCENT A. CULOTTA, JUDGE

Copies:

Mark Suedkamp
Jason T. Hartzell, Esq.
Laurence R. Snyder, Esq.

FINAL APPEALABLE ORDER
Clerk to serve pursuant
to Civ.R. 58 (B)

**MAUREEN G. KELLY
CLERK OF COMMON PLEAS COURT
CLERK OF 11TH DISTRICT COURT OF APPEALS
25 N. PARK PLACE
PAINESVILLE, OHIO 44077**

CASE NO. 15CV000042

**TO: LAURENCE R. SNYDER ESQ
STATE OFFICE BLDG 11TH FLOOR
615 WEST SUPERIOR AVENUE
CLEVELAND, OH 44113**

**NOTICE OF FINAL APPEALABLE ORDER
MARK SUEDKAMP vs . CITY OF PAINESVILLE et al**

On **April 30, 2015** a Judgment Entry or Order was signed by a Judge of the Court of Common Pleas and filed in the above captioned case.

This **NOTICE** is being sent by the Clerk of Courts in compliance with state statute.

NOTE: The Clerk of Courts cannot advise you of the amount of time for appeal nor interpret the intent of this Notice. For further information or clarification please contact your attorney.

**MAUREEN G. KELLY
LAKE COUNTY CLERK OF COURTS**

**MARK SUEDKAMP 79 ORCHARD GROVE PAINESVILLE OH 44077-2525
David L Harvey III/Jason T Hartzell 0080918 1 BEREAS COMMONS #216 BEREAS OH 44017**